

**ORDINANCE NO. 34-2009**

**An Ordinance to Protect and Promote the General Public Health, Safety and Welfare of the Citizens of the City of Montgomery Prohibiting Public Nuisances and Authorizing the Abatement of Certain Public Nuisances and Repealing Chapter 12, Sections 12-31 through 12-138 and Chapter 25, Section 25-187 of the Code of Ordinances of the City of Montgomery.**

**WHEREAS, the City of Montgomery is empowered to enact ordinances to protect and to promote the general public health, safety and welfare; and**

**WHEREAS, that overgrown grass and weeds and the accumulation of litter, junk, trash, stagnant water, mud and graffiti within the City of Montgomery can be injurious to the general public's health, safety and general welfare by**

- 1. Providing breeding grounds and shelter for rats, mice, snakes, mosquitoes and other vermin, insects and pests;**
- 2. Attaining such heights and dryness so as to constitute serious fire threat or hazard;**
- 3. Bearing wingy or downy seeds, when mature, that cause the spread of weeds and irritation to the throat, lungs and eyes of the public;**
- 4. Hiding debris, such as broken glass or metal, which could be dangerous or inflict injury on any person going upon the property; or**
- 5. Being unsightly, offensive or unwholesome; and**

**WHEREAS, the removal and clearance of overgrown grass or weeds, litter, junk, trash, stagnant water, mud and graffiti must be accomplished for the overall good and protection of the public health, safety and welfare.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONTGOMERY, ALABAMA, that Chapter 12, Sections 12-31 through 12-138 and Chapter 25, Section 25-187 of the Code of Ordinances of the City of Montgomery are hereby repealed; and the following Ordinance is hereby adopted:**

**ARTICLE I. DEFINITIONS**

**For the purposes of this ordinance, the following terms are defined as hereinafter set forth, to wit:**

**34-2009**

- a. **Foul Water.** Water that has an offensive odor, is visibly filled with algae or is polluted with oil or other pollutants.
- b. **Front Yard.** The yard extending across the entire width of the lot between the main building, including covered porches, and the front lot line; or if an official future street right-of-way line has been established, between the main building including covered porches and the right-of-way line. On corner lots, the narrower side shall be considered the front regardless of the location of the main entrance of the dwelling. Where both frontages of the lot are equal, the front yard shall be considered the side on which the majority of the lots front in the block.
- c. **Graffiti.** Any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.
- d. **Graffiti implement.** An aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark or sign on any natural or manmade surface.
- e. **Junk.** All vehicle parts, rubber tires, appliances, dilapidated furniture, machinery equipment, building material or other items which are either in a wholly or partially rotted, rusted, wrecked, junked, dismantled or inoperative condition. A motor vehicle will be considered inoperative for the purposes of this section if it cannot be safely operated or if it is incapable of being moved under its own power or if it may not be legally operated due to lack of any legal requirement including an expired license plate.
- f. **Improved Subdivision.** A division of a tract of land or acreage into tracts or parcels, and the improvement thereof by construction of streets, water lines and, where applicable, sewer lines to serve the subdivided property.
- g. **Litter.** All uncontainerized man-made waste materials including, but not limited to, paper, plastic, garbage, bottles, cans, glass, crockery, scrap metal, construction materials, rubbish, disposable packages or containers.
- h. **Motor Vehicle.** Any vehicle, machine, tractor, trailer or semi trailer, propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property. Motor vehicles do not include

**"recreational vehicles" as defined in Section 11 of the Zoning Ordinance of the City of Montgomery.**

- i. Mud. A slimy, sticky mixture of soft, wet earth, or sand, or dirt.**
- j. Overgrown grass or weeds. Overgrown grass or weeds exist if any of the following conditions are met: (1) the grass or weeds provide breeding grounds and shelter for rats, mice, snakes, mosquitoes and other vermin, insects and pests; (2) the grass or weeds attain such heights and dryness so as to constitute serious fire threat or hazard; (3) the grass or weeds bear wingy or downy seeds, when mature, that cause the spread of weeds, and when breathed, irritation to the throat, lungs and eyes of the public; (4) the grass or weeds are capable of hiding debris, such as broken glass or metal, which could inflict injury on any person going upon the property; (5) the grass or weeds are unsightly; or (6) if not grown as ornamental plant growth, the grass or weeds exceed 12" in height.**
- k. Regular/Preventative Maintenance. Those activities and services which are regularly performed to keep a motor vehicle in good running order including, but not limited to, the changing of oil, filters, belts, tires or spark plugs.**
- l. Trash. All organic material, including but not limited to, tree limbs, tree trunks, wood, building material, dead shrubbery. Included are grass clippings and leaves, except when prepared as and contained in a compost bin.**

## **ARTICLE II. OVERGROWN GRASS AND WEEDS**

### **Section 1. Overgrown Grass or Weeds Prohibited and Declared a Nuisance.**

**It shall be unlawful and declared a nuisance and injurious to public health, safety and general welfare for any occupant, owner, lessee, or person in control of any property within the City or any occupant, owner, lessee or person in control whose property abuts City streets to allow an abundance of overgrown grass or weeds to exist if any of the following conditions are met: (1) the grass or weeds provide breeding grounds and shelter for rats, mice, snakes, mosquitoes and other vermin, insects and pests; (2) the grass or weeds attain such heights and dryness so as to constitute serious fire threat or hazard; (3) the grass or weeds bear wingy or downy seeds, when mature, that cause the spread of weeds, and when breathed, irritation to the throat, lungs and eyes of the public; (4) the grass or weeds are capable of hiding debris, such as broken glass or metal, which could inflict injury on any person going upon the property; (5) the grass or weeds are unsightly; or (6) if not grown as ornamental plant growth, the grass or weeds exceed 12" in height. Said property shall include, but not be limited to, sidewalks, city**

right-of-way strips, alleys, parking lots, driveways, grounds, fences, walls, property lines, privately owned storm drains, and vacant lots within the City.

**Section 2. Exceptions.**

The following properties are exempted from the requirements of Section 1 above:

- A. Any property of more than five (5) acres which is located outside an improved subdivision and the boundaries of which are located at least 600 feet from any residential dwelling or commercial building;
- B. Cultivated row crops and garden plants in their respective growing seasons; however, this exception applies only to growing crops and garden plants, and shall not be construed to permit any crops or gardens to become overgrown with grass and weeds in violation of the remaining terms of this Article; or
- C. Any property that has been zoned agricultural property.

**ARTICLE III. STAGNANT WATER**

**Section 1. Foul Water Prohibited and Declared a Nuisance.**

It shall be unlawful and is declared a nuisance for any person to allow the accumulation of stagnant or foul water in any natural or man-made pond or lake on any property owned, occupied or under said person's control.

**Section 2. Exceptions.**

The following are exempted from the stagnant, but not foul water, requirements of Section 1 above:

- A. Ponds or lakes that are one-half acre or more in size;
- B. Ponds or lakes that are stocked with fish; and
- C. Ponds or lakes that are aerated by some mechanical means.

**Section 3. Swimming Pools or Hot Tubs.**

It shall be unlawful, between the fifteenth day of April and the fifteenth day of November each year, for any person to allow water to remain in a swimming pool or hot tub on premises owned, occupied or controlled by said person, unless such water is circulating

through an operational filtration system and chlorine or another similar chemical treatment has been applied to the water.

#### **ARTICLE IV. REPAIR OF MOTOR VEHICLES IN FRONT YARD**

It shall be unlawful and is declared a nuisance for any person to restore or repair any motor vehicle in the front yard of any residential building, including, but not limited to, rental residential buildings, boarding houses and apartment buildings. This provision is not intended to and does not prohibit the performance of regular/preventative maintenance.

#### **ARTICLE V. LITTER, TRASH AND JUNK**

It shall be unlawful and is declared a nuisance for any owner, occupant, lessee or person in control of any property within the City to allow the accumulation of litter, trash, junk or, if related to construction activity, mud. Said property shall include, but not be limited to, sidewalks, city right-of-way strips, alleys, parking lots, driveways, grounds, fences, walls, property lines, privately owned storm drains, and vacant lots within the City.

#### **ARTICLE VI. GRAFFITI**

It shall be unlawful and is declared a nuisance for any owner, occupant, lessee or person in control of any property within the City to apply or allow or permit graffiti on to any natural or manmade surface on any city-owned property or on any non-city-owned property, without the permission of the owner, occupant, lessee or person in control of any property. Said property shall include, but not be limited to, sidewalks, city right-of-way strips, alleys, parking lots, driveways, grounds, fences, walls, property lines, publicly owned or privately owned storm drains, and vacant lots within the City.

#### **ARTICLE VII. ABATEMENT OF NUISANCES AND ASSESSMENT PROCEDURE**

##### **Section 1. Right of Entry for Inspection.**

Whenever the Housing Code Department of Montgomery has reasonable cause to believe that a condition prohibited by this Ordinance exists, employees and duly authorized agents of the Housing Code Department shall have the right to enter the private property in question for the purpose of inspecting the property. Reasonable cause may be established by, but is not limited to, the filing of an oral or written complaint with the City.

##### **Section 2. Notice of Public Hearing to Approve Abatement and Assess Costs.**

**A. Whenever a condition prohibited by this Ordinance is found to exist on private property within the City, the Housing Code Department shall declare the condition a public nuisance and cause a written notice to be mailed by first class mail to "Occupant" at the address of the property upon which the nuisance exists and to the owner of said property as the information is listed in the records of the tax assessor or revenue commissioner. If the property is a vacant lot, written notice will be mailed by first class mail to the owner of said property as the information is listed in the records tax assessor or revenue commissioner.**

**B. Said notice shall contain the following:**

- 1. A description of the real property, by street address or otherwise, on which the nuisance exists;**
- 2. A direction to abate the nuisance within ten (10) days from the date of the notice;**
- 3. A description of the nuisance;**
- 4. A statement that unless the nuisance is abated, the City will abate the nuisance and the cost of abatement may be assessed against the property and may be added to the next regular taxes levied against the property;**
- 5. The date of the regularly scheduled City Council meeting in which a resolution will be presented to the City Council to approve the abatement of the nuisance and authorize assessment of the cost of abatement.**
- 6. A statement regarding the procedure for filing an objection to abatement of the nuisance and assessment of the cost of abatement against said property.**
- 7. A statement that an administrative fee of one hundred fifty dollars (\$150.00) also shall be assessed upon the property if the nuisance is not abated within ten (10) days of the notice to the owner and may be added to the next regular taxes levied against the property; and**
- 8. A statement that failure to abate the nuisance with ten (10) days from the date of the notice may result in criminal prosecution.**

**C. In addition, a sign entitled "NOTICE TO ABATE NUISANCE" shall be conspicuously posted on the property where the nuisance exists notifying the owner/occupant that a nuisance exists and that the City will take action to abate said nuisance if the nuisance is not abated within ten (10) days.**

### **Section 3. Public Hearing and Objections to Abatement of Nuisance.**

**A. Filing of Timely Objection to Condition Declared a Nuisance**

- 1. The owner, occupant, lessee or person in control of said property may file an objection to the declaration by the City of Montgomery that the**

condition constitutes a nuisance by notifying in writing the Chief Housing Code Inspector or his representative at least four (4) business days prior to the date of the regular scheduled meeting of the City Council for which the resolution ordering the abatement of the nuisance and assessing the cost of abatement has been scheduled.

2. The owner, occupant, lessee or person in control of said property shall also file the objection to the declaration by the City of Montgomery that the condition constitutes a nuisance by notifying in writing the City Clerk's office at least four (4) business days prior to the date of the regular scheduled meeting of the City Council for which the resolution ordering the abatement of the nuisance and assessing the cost of abatement has been scheduled.

B. The City Council shall hear and consider all evidence, objections, and protests regarding whether or not the condition constitutes a nuisance and whether same should be ordered abated or removed. The City Council may continue the hearing from time to time. Upon the conclusion of the hearing, the City Council shall decide whether a public nuisance exists and, if so, shall order it to be removed or abated with respect to any property or part thereof described. The City Council, by passage of the resolution, shall be deemed to have acquired jurisdiction to proceed and to perform or have performed the work of removal or abatement with respect to the property or part thereof. The decision of the City Council on the matter shall be deemed final and conclusive.

C. If a timely objection is not filed with the City Clerk or Chief Housing Code Inspector or his representative or if the owner, occupant, lessee or person in control of the property fails to appear at the hearing, no additional public hearing will be held on an individual property and abatement of the nuisance will proceed and costs of the abatement assessed. In such instance, the City Council shall be deemed to have acquired jurisdiction to proceed and either to perform or have performed the work of removal or abatement with respect to the property or part thereof and the decision of the City Council shall be deemed final and conclusive.

#### **Section 4. Abatement of Nuisance**

A. Unless otherwise notified, the designated Registered Nuisance Abatement Agents on file with the City Clerk's office shall meet with the Chief Housing Code Inspector or his representative at nine o'clock A.M. on the first day following each City Council meeting at which the City Council authorizes the abatement and removal of a nuisance to identify the property or properties that the Council has authorized to be abated. All Registered Nuisance Abatement agents interested in abating and removing the nuisance(s) shall submit bids to the Chief Housing Code Inspector by eleven o'clock A.M. on the first Friday following each City

Council meeting at which the City Council authorizes the abatement and removal of said nuisance(s). The designated Registered Nuisance Abatement Agent shall be selected on a competitive bid basis; however, strict compliance with state competitive bid laws is not required. Those persons so designated are hereby authorized to enter upon private property for purposes of abating or removing said nuisance and if said persons encounter obstructions to the removal of said nuisances, may remove same.

B. The Registered Nuisance Abatement Agent shall have ten (10) days to abate the nuisance and fifteen (15) days to submit the bill to the Housing Codes Office. In special circumstances, the Chief Housing Codes Inspector may grant an extension. However, failure to complete the abatement and submit a bill in the required time will result in the Chief Housing Codes Inspector awarding the abatement of the nuisance to subsequent designated Registered Nuisance Abatement Agent selected on a competitive bid basis.

C. The Chief Housing Codes Inspector has the authority to remove any Registered Nuisance Abatement Agent from the list for non-performance.

D. Any owner, occupant, lessee or person in control of said property shall have the right to have any nuisance removed at his or her own expense providing the removal is done prior to the commencing of the work by the employees or agents of the municipality to do the removal.

#### **Section 5. Collection of Nuisance or Weed Liens.**

A. The City Housing Code Department shall keep an account of the cost of abating or removing a nuisance where the work is done by a City employee or by a duly authorized Registered Nuisance Abatement Agent.

B. The amounts of the cost for abating the nuisance on the various parcels of land mentioned in the report shall hereinafter be referred to as "nuisance or weed liens," and shall constitute a nuisance or weed lien against the property for the amount of the abatement of said nuisance. After confirmation of the reports, a copy may be given to the appropriate official who is charged with the collection of taxes or assessments. It shall be the duty of said official to add the costs of the respective nuisance or weed liens to the next regular bills for taxes levied against the respective lots and parcels of land subject to each nuisance or weed lien, and thereafter, the costs shall be collected at the same time and in the same manner as ordinary municipal ad valorem taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency. In cases where cost for the abatement has been paid for by another source, no nuisance or weed lien may be placed against the owner's property.

C. The City may assess the abatement costs authorized against any lot or lots or parcel or parcels of land purchased by the State of Alabama or any purchaser at any sale for



the nonpayment of taxes and where an assessment is made against a lot or lots or parcel or parcels of land, a subsequent redemption thereof by a person authorized to redeem or sale thereof by the state, shall not operate to discharge, or in any manner affect the nuisance or weed lien for the assessment, but a person redeeming the property or purchaser at a sale by the state of any lot or lots or parcel or parcels of land upon which an assessment has been levied, whether prior to or subsequent to a sale to the state or purchaser for the nonpayment of taxes, shall take the same subject to the assessment.

**Section 6. Administrative cost of abatement.**

A. If the nuisance is not abated within ten (10) days of the date of the notice, there shall be an administrative fee of One Hundred Fifty dollars (\$150.00), which shall be added to the actual cost for abatement of the nuisance and shall be included in the amount of the lien filed with the appropriate official who is charged with the collection of taxes or assessments. The administrative fee shall be assessed against the owner of the property even if the nuisance is not ultimately abated by employees of the City or a Registered Nuisance Abatement Agent. The City may collect said fee through court action or any other lawful means; however, no lien may be placed against the owner's property solely to recover administrative costs.

B. If the City initiates the removal and abatement of multiple nuisance conditions on the same property at the same time, only one administrative fee will be assessed.

**ARTICLE VII. GENERAL PROVISIONS**

**Section 1. Requirement for registration of nuisance abatement agents.**

Businesses or individuals who register with the City Clerk and are approved by the City Council to abate nuisances pursuant to this Ordinance and who have filed with the City Clerk a Certificate of Insurance and proof of compliance with all City licensing requirements shall be included on the list of Registered Nuisance Abatement Agents. The Certificate of Insurance shall reflect coverage of adequate comprehensive general liability insurance as required by state law and shall be made by a company authorized to do business in the State of Alabama. Said list of Registered Nuisance Abatement Agents shall be posted in the office of the Chief Housing Code Inspector of the City. However, such names shall not constitute a recommendation and failure to post such list shall in no way affect the operation of this Ordinance.

**Section 2. Civil recovery of abatement costs.**

In lieu of assessing such removal or abatement costs against the respective property, the City may elect to recover the cost of abating or removing the nuisance from the owner of the property through a legal action filed in the court of appropriate jurisdiction.

**Section 3. Prosecution for violations of this Ordinance.**

A person commits a violation of the provisions of this Ordinance, thus subjecting himself to the penalties as set forth in Chapter 1, Section 1-6 of the Code of Ordinances for the City of Montgomery, Alabama, upon any third or subsequent violation of this Ordinance within a twenty-four (24) month period on any single lot or parcel within the City. The dates of the resolutions passed by the City Council authorizing the abatement of said nuisance and costs assessed shall be determinative for purposes of calculating violations of this Ordinance within a twenty-four (24) month period.

**Section 4. Abatement procedures separate from penalty.**

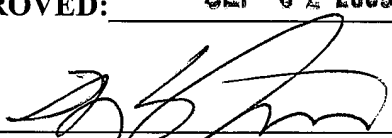
The requirement to abate a nuisance is not a penalty for violating this Ordinance but is an additional remedy. Abatement proceedings and prosecution of a violation may occur simultaneously. Neither the initiation of prosecution for violations of this Ordinance nor the imposition of a penalty relieves a responsible party of the duty to abate such nuisance.

**Section 5. Severability.**

If any provision of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such provision and such holding shall not affect the validity of any other provision and, to that end, the provisions of this Ordinance are hereby declared to be severable.

ADOPTED this 15<sup>th</sup> day of September, 2009.

  
BRENDA GALE BLALOCK, CITY CLERK

APPROVED: SEP 02 2009  
  
TODD STRANGE, MAYOR